

March 9, 2021

**SUBJECT: Request for Proposal / RFP #122F-20
Overhaul of Two 149-Passenger Subchapter “T” Ferries
COMMBUY'S Bid# BD-21-1206-40000-40000-56900**

Addendum No. 5

Dear Bidders:

Please be advised that the above has been amended and/or clarified as shown on the attached that is made a part of herein.

The Proposal deadline has been extended to April 21, 2021, 2:00pm EST.

Please see *pages 2 through 11* of this Addendum for *additional* responses to Requests for Clarifications.

Acknowledgment of this Addendum must be so noted on your proposal submittal.

ALL ELSE REMAINS AS PREVIOUSLY STATED.

Sincerely,

Joe Flynn
Sourcing Executive

Attachment

Addendum No. 5 (p. 2)

Clarifications & Responses

Commercial

Section 1.3 DBE Participation Goal

Question/Comment:

Section 1.3 within the Proposal Information portion of the RFP establishes a contract DBE goal of 8%. This should be substantially reduced in recognition of the nature of the work. Several of the most significant portions of the work in this project must be subcontracted to non-DBE firms. Refurbishing of the engines, waterjets and gears must be accomplished by qualified and authorized firms with access to the original equipment manufacturers' products, tooling, documentation, and expertise. None of these firms is a disadvantaged business certified under the US DOT program found at 49 CFR Part 26. The most significant portions of the work cannot reasonably be done by any firm other than the prime contractor. Fabrication of replacement sections of the hull and superstructure and final assembly of the refurbished vessels do not lend themselves to subcontracting to a DBE firm. The materials necessary for these most significant tasks likewise cannot reasonably be obtained from a DBE business without violating the commercially useful function requirements of 49 CFR 26.55. MBTA should acknowledge the limited opportunity for meaningful DBE participation in this project and remove or substantially lower the DBE goal assigned to the project.

Response: Regarding attaining the DBE goal (established at 8% for this procurement), the bidder is encouraged to seek out potential firms that can perform the necessary work scopes, and that also fit the DBE profile, and then look to get them certified in MA as DBEs. These prospective firms might not be certified DBEs already, but should they fit the profile, the bidder could work on getting them certified as such. That would demonstrate that the bidder is making the requisite good faith efforts in looking for solutions to help them meet the DBE Participation Goal at bid time. For additional information regarding good faith efforts guidelines, please refer to:

www.mbta.com/business-center/disadvantaged-business-unit

Section 1.4 Request for Proposals Timeline

Please change the last line to read as follows:

“Proposal Due Date: February 24, 2021”

Section 1.16 Appropriate Contingency

Question: This section notes that the MBTA intends to seek federal funds for the Contract. Have the funds been obtained?

Response: Federal Funds have been obtained to support this Contract.

Addendum No. 5 (p. 3)

Section 6.8 Acceptance of Vessels

Question: Is it a requirement of this Contract that Contractor's employees be paid in accordance with prevailing wage labor rates requirements, including those employees working on the Contractor's property.

Response: It is not a requirement that prevailing wage rates be paid on this Contract.

Executed Change Orders and Amendments

Question: Given the time sensitive nature of change orders and the risk that a change order can add time to a given job, we would like to ask that the terms be changed to allow for 50% of the change order paid upon approval with the balance due at the Conditional Acceptance of the vessel.

Response: Replace Section 7.4, Item D with the following:

- D. The Contractor must issue invoices for executed Change Order(s) per the requirements of Section 8.4: Payment for Change Orders. Payment will be made in accordance with Section 3 – Liquidated Damages.

Response: Section 7.2.B.3.e:

Add a new item iii as follows:

- iii. The change order shall quantify the costs associated with the payment milestones in Section 8.4: Payment for Change Orders.

Section 8.1. Terms of Payment

Question: Timeliness is imperative in keeping an overhaul project such as this on track. We would like to request a shorter payment period of 15 days after receipt of properly prepared Contractor's invoice.

Response: The MBTA is willing to review early payment discounts submitted by the Bidders.

Section 8.2 Schedule of Partial Payments for Base Award

Question: As written, section 8.2 of the RFP represents a significant negative cash flow for the contractor. It does not address costs for mobilization and disassembly. Payments are largely tied to reports and not tied to real events that reflect actual progress on the vessels. The timing of some of the subparts is out of our control, so we would like to get payments for subparts. Would it be possible to use the attached revised payment schedule?

Addendum No. 5 (p. 4)

Question: Given the timing of work on an overhaul project, there will be times when more than one Payment Milestone will occur within a month. We take exception to the clause allowing for only one milestone per month and would like it removed.

Question: Proper funding and timeliness of payment is imperative in keeping an overhaul project such as this on track, we would like to remove the clause ‘All milestones will be paid in sequence except as indicated above.’

Response:

Replace Section 8.2 in its entirety with the following:

8.2 Schedule of Partial Payments for Base Award

- A. Capital Spare Parts will not be a part of, or submitted in, the following Schedules of Partial Payment. Spare Parts will be invoiced separately and paid upon delivery.
- B. MBTA will pay the Contractor in accordance with the Partial Payment Schedule below and corresponding deliverables in the Contract Deliverable Requirement List (CDRL) provided in Technical Specification Appendix E.
- C. Multiple milestones or sub-milestones may be invoiced at a time; however, they shall be submitted together with any other invoices under Sections 8.3 or 8.4. Invoices shall be submitted no more frequently than twice per month.
- D. The Contractor is required to submit a Proposal Price(s) based on the following Payment Schedule:

MBTA Ferry Overhaul Payment Milestones

Milestone	Payment Milestone		Sub-Milestone	Milestone	Cumulative
A	Approval of Master Program Schedule and production schedules and submittal of project management and quality assurance program plans			3.0%	3.0%
B	Mobilization and Disassembly			4.0%	7.0%
	B1	Completion of sea trials	0.50%		
	B2	Haul out and bottom survey complete	0.50%		
	B3	Removal of jets, engines, gears and generators complete	0.50%		
	B4	Engine room and jet room cleaning complete	0.50%		

	B5	Interior linings, insulation ceiling, carpets and seats removal complete	0.50%		
	B6	Control console and electronics removal complete	0.50%		
	B7	Exterior paint removal complete	0.50%		
	B8	Windows and doors removal complete	0.50%		
C	Design Review Milestones - successful completion & approval			15.5%	22.5%
	C1	Hull Design Review	2.00%		
	C2	Decking/Superstructure/Rails and Gates Design Review	2.00%		
	C3	Main Engine and Reduction Gear Overhaul	1.00%		
	C4	Generator & Integration Design Review	1.50%		
	C5	Jet Drive Design Review	1.00%		
	C6	Passenger Furnishings Design Review	1.00%		
	C7	All Tankage Design Reviews	0.50%		
	C8	HVAC Design Review	1.50%		
	C9	Navigation Electronics & Pilothouse Console Mock-Up Design Review	2.00%		
	C10	Exhaust System, Engine Room Fire Suppression System Design Review	1.50%		
	C11	Passenger Information, Passenger Entertainment, CCTV & Operator Camera Design Review	1.00%		
	C12	IBAs Design Review	0.50%		
D	Proof of purchase orders for major equipment & materials - Vessel 1:			8.0%	30.5%
	D1	Hull Materials	1.50%		
	D2	Decking/Superstructure/Rails and Gates Materials	1.50%		
	D3	Main Engines & Reverse/Reduction Gear Overhauls	1.00%		
	D4	Generators	1.50%		
	D5	Waterjet Overhaul	1.00%		
	D6	Passenger Furnishings	1.50%		
E	First Article Inspections - Successful completion & approval			15.0%	45.5%
	E1	Hull FAI	1.00%		
	E2	Decking/Superstructure/Rails and Gate Materials FAI	1.00%		
	E3	Main Engine and Reduction Gear FAI	2.00%		
	E4	Generator FAI	2.00%		
	E5	Jet Drive FAI	2.00%		
	E6	Passenger Furnishings FAI	1.00%		
	E7	Tankage FAIs	1.00%		
	E8	HVAC FAI	1.00%		
	E9	Navigation Electronics FAIs	1.00%		

	E10	Exhaust System, Engine Room Fire Suppression System FAIs	1.00%		
	E11	Passenger Information, Passenger Entertainment, CCTV & Operator Camera Systems FAI	1.00%		
	E12	IBA FAI	1.00%		
F	Structural Work - Successful completion & approval - Vessel 1			11.0%	56.5%
	F1	Completion of Hull & Splashguard Repairs	6.00%		
	F2	Completion of Decking/Superstructure/Rails/Void Overhead and Gates Repair & Construction	5.00%		
G	Approval of service support documentation, training, special tools, and equipment required to support the vessel.			4.0%	60.5%
	G1	Approval of service support documentation and equipment, including all manuals, special tools, and equipment required to support the vessel.	1.00%		
	G2	Approval of Warranty Plan	0.25%		
	G3	Completion of Operator Training	0.25%		
	G4	Completion of Maintenance Training	0.50%		
	G5	Receipt of final as-built drawings and all maintenance manuals and maintenance documentation	2.00%		
H	Vessel Testing, Delivery & Acceptance - Vessel 1			7.5%	68.0%
	H1	Successful completion of all sea trials at Contractor's facility, pre-shipment inspection by Owner, and receipt of approval to ship to Owner.	5.00%		
	H2	Delivery of vessel to Owner	0.50%		
	H3	Conditional Acceptance by Owner, including successful completion of all testing required at Owner's service area.	1.00%		
	H4	Receipt of all required certifications and Coast Guard Approval	1.00%		
I	Mobilization and Disassembly			4.0%	72.0%
	I1	Completion of sea trials	0.50%		
	I2	Hauled out and bottom surveyed	0.50%		
	I3	Jets, engines, gears and generators removed	0.50%		
	I4	Engine room and jet room clean	0.50%		
	I5	Interior linings, insulation ceiling, carpets and seats removed	0.50%		
	I6	Control console and electronics removed	0.50%		
	I7	Exterior paint removed	0.50%		
	I8	Windows and doors removed	0.50%		
J	Proof of purchase orders for major equipment & materials - Vessel 2			8.0%	80.0%
	J1	Hull Materials	1.50%		

	J2	Decking/Superstructure/Rails and Gates Materials	1.50%		
	J3	Main Engines & Reverse/Reduction Gear Overhauls	1.00%		
	J4	Generators	1.50%		
	J5	Waterjet Overhaul	1.00%		
	J6	Passenger Furnishings	1.50%		
K		Structural Work - Successful completion & approval - Vessel 2		11.0%	91.0%
	K1	Completion of Hull & Splashguard Repairs	6.00%		
	K2	Completion of Decking/Superstructure/Rails/Void Overhead and Gates Repair & Construction	5.00%		
L		Vessel Testing, Delivery & Acceptance - Vessel 2		7.5%	98.5%
	L1	Successful completion of all sea trials at Contractor's facility, pre-shipment inspection by Owner, and receipt of approval to ship to Owner.	5.00%		
	L2	Delivery of vessel to Owner	0.50%		
	L3	Conditional Acceptance by Owner, including successful completion of all testing required at Owner's service area.	1.00%		
	L4	Receipt of all required certifications and Coast Guard Approval	1.00%		
M		Successful completion of the contract, including, but not limited to closeout of all open items. Completion of all outstanding retrofits for all vessels, delivery of all Capital Spares, Special Tools, and completion of all administrative and technical matters with the exception of the warranty program.		1.0%	99.5%
N		Completion of Warranty		0.5%	100.0%
				100.0%	

Section 8.3: Schedule of Partial Payments for Options

Add a new item B:

B. "Multiple milestones may be invoiced at a time; however, they shall be submitted together with any other invoices under Sections 8.2 or 8.4. Invoices shall be submitted no more frequently than twice per month."

Section 8.4: Payment for Change Orders

Replace the text in Section 8.4 with:

A. In accordance with Section 7, the Contractor must prepare invoices for approved Change Orders on an individual vessel basis. Contractor may invoice for payment as follows:

Addendum No. 5 (p. 8)

Paymt	Payment Milestone	Payment as Defined by Approved Change Order Pricing (see Section 7.2)
i	Completion of Design Review	Design Costs
ii	Issuance of Purchase Orders for Materials and Equipment	Amount due to suppliers at issuance of purchase orders
iii	Authority inspection and approval (including FAI where appropriate) of delivered materials and equipment	Balance of cost paid to suppliers at delivery of materials and equipment to the Contractor
iii	At Authority acceptance of the completed change order work – paid per vessel.	Balance of Change order cost.

B. Multiple milestones may be invoiced at a time; however, they shall be submitted together with any other invoices under Sections 8.2 or 8.3. Invoices shall be submitted no more frequently than twice per month.

Section 9.21.12 Employer Requirements

Question: Is it requirement of this contract that all employees of the Contractor, including those working on the contractor's property, be paid in accordance with prevailing labor rate requirements?

Response: It is not a requirement that employees of the Contractor, including those working on the Contractor's property be paid in accordance with prevailing wage rate requirements.

Section 9.23.2.1 Supplemental Provisions, Security Requirements

Question: If the Security Requirements apply to the Contractor's employees while working at the Contractor's worksite, we take exception with this requirement. Given the number of projects being completed at one time in our workplace, employees often move between projects. Providing up-to-date information to the MBTA would be time consuming and not provide value to the work we perform. In addition, we value our employees' privacy and are not comfortable releasing this information without their express permission. Can this requirement be eliminated?

Question: If the Security Requirements apply to the Contractor's employees while working at the Contractor's worksite, we take exception with this requirement. We have a stable, long term workforce. Our current employment practices do not require this level of scrutiny and would cause major disruption in our workplace. Can this requirement be eliminated?

Addendum No. 5 (p. 9)

Response: Please replace this section with the following:

“The Contractor shall certify that it will comply with the MBTA’s Security Requirements as stated herein. The selected Contractor shall:

1. Maintain a complete list of Contractor’s employees, subcontractors, and agents that will perform work for the MBTA under this Contract. This list must be submitted upon request. At a minimum, the list shall include:
 2.
 - a. Name and Employee Number/Identifier
 - b, Job Title
 - c. Hours and Location of Work”

Section 9.23.24 Workplace Environment, Labor Harmony

Question: We take exception to the requirement of Prevailing Wage Rates. The overhaul of the two vessels will not be completed on MBTA property; therefore, the Prevailing Wage Rate requirement should not apply to this contract. Can this requirement be eliminated?

Response: Please delete the first sentence from this section:

“Prevailing Wage Rates Apply.”

Section 9.24.16 Davis Bacon and Copeland Anti-Kickback Acts

Question: Is it a requirement of this contract that all employees of the contractor working on contractor property be paid in accordance prevailing labor rate requirements?

Response: It is not a requirement of this contract that all employees of the contractor working on contractor property be paid in accordance with prevailing labor rate requirements.

Section 9.24.8 Energy Conservation Requirements

Question: Does 9.2.4.8 apply to this contract as the Ferries are not buildings.

Response: This section does not apply to this contract.

Section 9.24.27 Transit Employee Protective Agreements

Question: Is any part of the contractor’s scope of work considered to be “transit operations as described in 9.24.27?

Response: Section 9.24.27 does not apply to the contractor’s work scope of RFP 122F-20.

Section 9.24.32 National Intelligent Transportation Systems (ITS) Architecture and Standards

Addendum No. 5 (p. 10)

This section does not apply to this Procurement.

Section 9.24.10 Pre-Award and Post-Delivery Audits Requirements

Comment/Request: Section 9.24.10 of the Contract Terms and Conditions would require an audit to establish compliance with Buy America, an FTA requirement applicable only to application of the ‘rolling stock rule’ of 49 CFR 661.11 and Items 1 and 2, Attachment 3 are rolling stock Buy America certifications. MBTA should instead apply the ‘manufactured product rule’ of 49 CFR 661.5. The nature of the work described in the RFP is an overhaul rather than a rebuild. That is, the RFP contemplates key components such as the engines, waterjets, and gears will be remanufactured rather than replaced. When FTA examined which rule to apply to overhaul situations, FTA expressed an opinion that the manufactured product was more properly applied. In a proposed policy published at 98 Federal Register 29953, dated May 21, 2012, at page 29954, FTA stated “FTA views the purchase of replacement parts for an overhaul the same as it views the purchase of individual replacement parts—the manufactured product requirements of 49 CFR 661.5 apply; all components must be produced in the United States.” While FTA never acted to finalize this policy, owing in substantial measure to the sometimes-subjective nature of differentiating overhauls such as this project from rebuild projects that included a wholesale replacement of key components throughout the vessel, the FTA statement provides ample evidence that this project should be viewed under the manufactured product rule. Should MBTA agree that the manufactured product rule is properly applied, they should replace the certifications with manufactured product certifications. Moreover, MBTA could but would not be required to conduct a Buy America audit under the manufactured product rule. Dispensing with the onerous audit requirements would allow the builder and MBTA both to avoid the substantial costs and time commitments of formal Buy America audits, ultimately reducing MBTA’s costs while remaining in full compliance with Buy America.

Response: The MBTA has reviewed Section 9.24.10 in regard to this procurement and has determined that the project is classified as a rebuild for the following reasons:

1. The boats and their machinery and systems are being reconditioned
2. This project is being performed on boats that are at the end of their initial useful life.
3. And the scope is designed to extend the life of these boats for an additional 10 years.

Therefore, the Buy America audits in Section 9.24.10 will apply to this procurement.

Clarification:

Improvement Proposals

Bidders may submit along with their bid, improvement proposals in relation to the Scope of Work contained in Technical Specification RROPS20-01. Improvement proposals are intended to reduce cost or risk, provide a better value, or provide an improved end product.

Addendum No. 5 (p.11)

Improvement proposals shall not be included in Bidder's Cost Proposal on Attachment 5, but shall include cost information for consideration by the MBTA during bid negotiations or design review – as appropriate to the proposal.

Improvement Proposals shall be in writing (each an “**Improvement Proposal**”) in a separate section of the Technical Proposal and shall include:

- A description of the proposed changes to the Scope of Work.
- An itemized list of the financial or other benefits to both the Authority and the Bidder that would result from the proposed improvement.
- Cost of the Improvement Proposal, both in total, and as a change to the contract value.
- A proposed timeline for the proposed improvements, including the effect on the overall project schedule.
- All other detail necessary for the MBTA to adequately evaluate the proposal.

Improvement Proposals shall be supported by such feasibility and implementation information necessary to understand the proposal and the implications for the project. The Authority reserves the right to request additional information to support its evaluation of Improvement Proposals.

Adoption of any Improvement Proposal shall be at the MBTA’s sole discretion. Any adjustment to the Bidder’s compensation due to an adopted Improvement Proposal shall be made such that any cost savings resulting from implementation of the Improvement Proposal shall be allocated 60% to the Authority and 40% to the Operator.

Attachments to Addendum No. 5 include:

- **Appendix E to Technical Specification CDRLs list**
- **Attachment 5 to RFP 122F-20 - Revised Pricing Proposal Form**

ALL ELSE REMAINS AS PREVIOUSLY STATED.